

# EXHIBIT B

**DURKIN & DURKIN, LLP**

80 Broad Street – Fifth Floor  
New York, New York 10004  
(212) 349-8173  
Attorneys for Defendants,  
Gerardo Rodriguez and Volpe Dedicated, Inc.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FELICITA MELENDEZ,

Plaintiff(s),

-against-

GERARDO RODRIGUEZ and VOLPE  
DEDICATED, INC. and RITE AID  
HEADQUARTERS CORP.

Defendant(s).

**CIVIL ACTION NO. 12-CIV-8846**

**NOTICE OF EXPERT EXCHANGE OF  
KEVIN GALBREATH.**

TO: Joseph P. Napoli, Esq.  
Napoli Bern Ripka Shkolnik, LLP  
350 Fifth Avenue, Suite 7413  
New York, New York 10118

Keith A. Raven  
Raven & Kolbe, LLP  
126 East 56<sup>th</sup> Street, Suite 202  
New York, New York 10022

**PLEASE TAKE NOTICE** that pursuant to the Federal Rules of Civil Procedure, Defendants **VOLPE DEDICATED, INC.** (hereinafter “**VOLPE**”) and **GERARDO RODRIGUEZ** (hereinafter “**RODRIGUEZ**”) (collectively herein “**THE VOLPE DEFENDANTS**”) by and through its attorneys, DURKIN & DURKIN, LLP, hereby identifies Kevin Galbreath, as an expert Transportation Safety Specialist who may be called to the stand at the time of Trial in accordance with the following:

1. Kevin Galbreath is a Transportation Safety Consultant. It is anticipated that Mr. Galbreath will be called to the stand to testify on behalf of **THE VOLPE DEFENDANTS** in the above matter.


2. Attached hereto as Exhibit "A" is the Expert Exchange by counsel for **RITE AID HEADQUARTERS CORP.** through which they exchanged Mr. Galbreath on August 8, 2013. Mr. Galbreath's report, his *Curriculum Vitae*, his fees and a list of depositions that Mr. Galbreath has given in the past four (4) years are all a part of Exhibit "A".

3. It is anticipated that Mr. Galbreath will testify in conformity with his expert report, his deposition and the three simulations of this incident that Mr. Robert Miller prepared.

DATED: New York, New York  
September 20, 2013

**DURKIN & DURKIN, LLP**

By:

  
Stephen M. Knudsen (0539/SMK)

Attorneys for **Defendants**,  
Gerardo Rodriguez and Volpe  
Dedicated, Inc.  
80 Broad Street - Fifth Floor  
New York, New York 10004  
212-349-8173

TO: Napoli Bern Ripka Shkolnik, LLP  
Attorney for Plaintiff  
Attn: Joseph Napoli, Esq.  
350 5<sup>th</sup> Avenue, Suite 7413  
New York, New York 10118  
212-267-3700-Office  
212-587-0031-Facsimile

Raven & Kolbe, LLP  
Attorney for Rite Aid Headquarters Corp.  
Att.: Keith A. Raven, Esq.  
126 East 56<sup>th</sup> Street, Suite 202  
New York, New York 10022  
212-759-7466-Office  
212-759-0166-Facsimile

RAVEN & KOLBE, LLP  
 Keith A. Raven, Esq. (KR-8086)  
 Attorneys for Defendant  
 RITE AID HDQTRS CORP. s/h/a  
 RITE AID HEADQUARTERS CORP.  
 126<sup>th</sup> East 56<sup>th</sup> Street, Suite 202  
 New York, New York 10022  
 (212) 759-7466

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X  
 FELICITA MELENDEZ,

Plaintiff(s),

-against-

GERARDO RODRIGUEZ, VOLPE  
 DEDICATED, INC. and RITE AID  
 HEADQUARTERS CORP.,

Defendant(s).  
 -----X

: Civil No.: 12 Civ. 8846 (PKC)

: **NOTICE OF EXPERT EXCHANGE**

C O U N S E L O R (S):

PLEASE TAKE NOTICE that pursuant to the Federal Rules of Civil Procedure, defendant, RITE AID HDQTRS CORP. s/h/a RITE AID HEADQUARTERS CORP., by and through its attorneys, RAVEN & KOLBE, LLP, hereby identifies Kevin Galbreath, as an expert Transportation Safety Specialist who may be called to the stand at the time of Trial in accordance with the following:

1. Kevin Galbreath is a Transportation Safety Consultant, whose address is 1002 South Briarcliff Circle, Maryville, Tennessee 37803. It is anticipated that Mr. Galbreath will be called to the stand to testify on behalf of the defendants in the above matter.

2. Mr. Galbreath's *Curriculum Vitae* is annexed hereto and made a part hereof as Exhibit "A" providing his credentials.

3. It is anticipated that Mr. Galbreath will testify in conformity with his report of July 30, 2013, a copy of which is annexed hereto and made a part hereof as **Exhibit "B"**.

4. Mr. Galbreath's fees for examination before trial is annexed hereto and made a part hereof as **Exhibit "C"**.

5. A list of cases Mr. Galbreath has given deposition testimony in the past four (4) years is annexed to Mr. Galbreath's *Curriculum Vitae*, see Exhibit "A".

Dated: New York, New York  
August 8, 2013

RAVEN & KOLBE, LLP  
Attorneys for Defendant  
RITE AID HDQTRS CORP. s/h/a  
RITE AID HEADQUARTERS CORP.

By:

  
KEITH A. RAVEN, ESQ. (KR-8086)

TO:

NAPOLI BERN RIPKA SHKOLNIK, LLP  
Attorney for Plaintiff  
FELICITA MELENDEZ  
350 5<sup>th</sup> Avenue, Suite 7413  
New York, New York 10118  
Tel. (212) 267-3700

DURKIN & DURKIN, LLP  
Attorneys for Defendants  
GERARDO RODRIGUEZ and  
VOLPE DEDICATED, INC.  
80 Broad Street, 5<sup>th</sup> Floor  
New York, New York 10004  
Tel. (212) 349-8173  
Fax (212) 858-5770

# **EXHIBIT “A”**

Kevin Galbreath  
Transportation Safety Specialist  
1002 South Briarcliff Circle  
Maryville, TN 37803  
865-414-6438 + kcs8657@charter.net

**Galbreath**  
Consulting  
Service



## CURRICULUM VITAE

July 2013

### Current Employment

Transportation Safety Consultant, May 2003 until Present

Specialize in motor carrier loss control programs and regulatory compliance issues involving the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations, Title 49, Code of Federal Regulations.

Conduct motor carrier risk assessments by evaluating regulatory compliance, driver turnover, driver training programs, accident trends and other loss control programs. Make recommendations and advise motor carriers pertaining to regulatory compliance, driver hiring procedures, driver training and orientation, driver retention and accident reduction.

Conduct Seminars pertaining to Motor Carrier Safety and Hazardous Materials Regulations, Motor Carrier Profiles, Compliance Safety and Accountability (CSA), Driver Hiring and Retention, and various driver-training issues.

Guest speaker for trucking associations in North Carolina, Tennessee, South Carolina, and Georgia, as well as the Arkansas Oil Marketers Association, Great West Casualty Company, Kiwanis Clubs and various other associations.

During the past several years as a consultant, I have worked with several motor carriers across the country. I have assisted them with all aspects of compliance with the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations. I have helped motor carriers obtain a Satisfactory Safety Rating with the Federal Motor Carrier Safety Administration by guiding them to enhance their compliance standards and safety performance. I have also helped motor carriers monitor, maintain and reduce their CSA Basics. I have also been subcontracted to the Department of Energy in Oak Ridge, Tennessee as a Subject Matter Expert (SME) pertaining to review, enhance and develop training for all employees regulated by the Federal Motor Carrier Regulations and Hazardous Materials Regulations, including radioactive materials.

Previous Employment

Great West Casualty Company, February 1998 until May 2003.

Safety and Loss Control Specialist, Southeast Regional Office

Conducted motor carrier risk assessments by evaluating regulatory compliance, management's commitment to safety, driver turnover, driver training programs, accident trends and other loss control programs. Made recommendations and advised motor carriers pertaining to regulatory compliance, driver hiring procedures, driver training and orientation, driver retention and accident reduction.

Certified instructor for the National Safety Council's Defensive Driving Course for the Professional Truck Driver and for Great West Casualty's Ethics and Techniques for the Professional Truck Driver Course and Great West Casualty's Value Driven Driving Course.

Conducted Seminars pertaining to Motor Carrier Safety and Hazardous Materials Regulations, Motor Carrier Profiles, SafeStat, Driver Hiring and Retention, and various driver-training issues.

United States Department of Transportation, Federal Highway Administration, Office of Motor Carriers, March 1990 until January 1998.

Division Program Specialist, South Carolina Division, 1997 – 1998

Conducted Safety Compliance Reviews (Audits) of Motor Carriers and Shippers of Hazardous Materials; Conducted Investigations of violations of the Federal Motor Carrier Safety Regulations and Hazardous Material Regulations; Submitted Enforcement Cases that resulted in civil penalties; Trained and developed new Safety Investigators; Inspected commercial motor vehicles during roadside inspections and compliance reviews.

Responsible for several federal and state programs including the South Carolina State Transport Police State Enforcement Plan, Motor Carrier Safety Assistance Grant, Uniformity Grant pertaining to the implementation of International Fuel Tax Agreement/International Registration Program (IFTA/IRP), One-Stop-Shopping, Automated Vehicle Identification, and Digitalized Licenses, National Governors Association Grant (Uniform Large Vehicle Crash Report). I was a member of the National Accident Analysis Steering Committee.

Hazardous Materials Specialist, South Carolina Division, 1992 – 1997

Conducted Safety Compliance Reviews (Audits) of Motor Carriers and Shippers of Hazardous Materials; Conducted Investigations of violations of the Federal Motor Carrier Safety Regulations and Hazardous Material Regulations; Submitted Enforcement Cases which resulted in civil penalties; Investigated accidents involving Commercial Motor Vehicles; Conducted seminars on Motor Carrier Safety Regulations and Hazardous Material Regulations; Inspected commercial motor vehicles



during roadside inspections and compliance reviews; Trained and developed new Safety Investigators; Trained and developed the South Carolina State Transport Police Commercial Vehicle Enforcement Unit and Hazardous Materials Unit; Member of the USDOT Hazardous Waste and Substance Technical Advisory Group. Completed assignment to the San Francisco Regional Office as the Acting Federal Hazardous Materials Program Manager.

Safety Investigator/Specialist, Florida Division, 1990 – 1992

Conducted Safety Compliance Reviews (Audits) of Motor Carriers and Shippers of Hazardous Materials; Conducted Investigations of violations of the Federal Motor Carrier Safety Regulations and Hazardous Material Regulations; Submitted Enforcement Cases which resulted in civil penalties; Trained and developed new Safety Investigators; Inspected commercial motor vehicles during roadside inspections and compliance reviews.

### Education

The University of Tennessee, Knoxville, 1986, BFA

### Training

Motor Carrier Safety Training Academy, Transportation Safety Institute (TSI), Oklahoma City, OK

#### Regulatory Compliance Areas Covered:

- Hours of Service
- Driver Qualifications
- Vehicle Inspections
- Vehicle Maintenance and Repair
- Transportation and Shipment of Hazardous Materials
- Financial Responsibility

#### Other Transportation Safety Institute (TSI) Courses

- Controlled Substances Testing
- Hazardous Materials Enforcement and Compliance Course
- Specialized Hazardous Materials – Cargo Tank Test and Inspection Facilities
- Specialized Hazardous Materials – Performance Oriented Packaging, HM-181
- Specialized Hazardous Materials – Hazardous Waste and Substance
- Specialized Hazardous Materials – Hazardous Waste and Substance
- Specialized Hazardous Materials – Radioactive Materials
- Intermodal Transportation of Hazardous Materials
- Motor Carrier Safety Enforcement Procedures
- Hazardous Materials Awareness (OSHA)
- Enforcement Procedures Course
- United States Coast Guard Container Inspection Program Training

Motor Carrier Safety Assistance Program (MCSAP) Grants Management  
Office of Motor Carriers Coaches Workshop (Investigator Train the  
Trainer Course)  
Commercial Vehicle Drug Interdiction Techniques  
Basic Hazardous Materials

**Other Transportation Safety Related Courses**

Specialized Hazardous Materials – Explosives (OMC National Training  
Center)  
Advanced Waste (Transportation Management Division, US Department  
of Energy)  
Motor Carrier Size and Weight (SC Criminal Justice Academy)  
Specialized Hazardous Materials – First Response (SC Criminal Justice  
Academy)  
Basic Environmental Law Enforcement (SC Office of Attorney General)  
OSHA Standards (Great West Casualty Company)  
Accident Investigations  
Accident Countermeasures  
Investigation Techniques (Federal Law Enforcement Training Center)

**Court testimony given within the last 4 years**

None

**Depositions given within the last 4 years**

Webb v. Tyson's Foods, Inc.  
Circuit Court of Jones County, Mississippi, First Judicial District  
James K. Fear, et al. v. Madaris Transportation, LLC, et al.  
Hancock County Common Pleas, Ohio  
US Department of Transportation, Federal Motor Carrier Safety Administration v. Truse  
Trucking, Inc.  
US Department of Transportation Office of Hearings, Washington DC  
US Department of Transportation, Federal Motor Carrier Safety Administration v. Truse  
Trucking, Inc.  
US Department of Transportation Office of Hearings, Washington DC

**Authorized Publications**

None

# **EXHIBIT “B”**

Kevin Galbreath  
Transportation Safety Specialist  
1002 South Briarcliff Circle • Maryville, TN  
865-414-6438 • kcs8657@charter.net

**Galbreath**  
Consulting  
Service



July 30, 2013

Keith A. Raven  
RAVEN & KOLBE, LLP  
126 East 56<sup>th</sup> Street, Suite 202  
New York, New York 10022

Re: Felicita Melendez v Gerardo Rodriguez and Volpe Dedicated, Inc. and Rite Aid Headquarters Corp.

Mr. Raven:

I have reviewed the material furnished me which is listed in the attachment "Evidence Reviewed". The following are my opinions and conclusions.

On October 24, 2012, driver Gerardo Rodriguez was fully qualified to drive a commercial motor vehicle under the rules and regulations of the U. S. Department of Transportation, Federal Motor Carrier Safety Administration. He possessed a valid Class A Commercial Driver's License and could legally drive a CMV in every State. At the time of hire and throughout his tenure with Volpe Dedicated, Inc., driver Gerardo Rodriguez had a very good driving record with only one minor moving violation at a previous employer. Driver Gerardo Rodriguez also possessed a current physical from a medical examiner, qualifying him physically to operate a commercial motor vehicle in interstate commerce.

Driver Gerardo Rodriguez' deposition describing his procedures in performing a right turn and mirror usage, fall in line with the Commonwealth of Pennsylvania Commercial Driver's Manual, the New Jersey Motor Vehicle Commission Commercial Driver License Manual, the New York State Commercial Driver's Manual, National Safety Council's Defensive Driving for the Professional Truck Driver and Value Driven Driving for the Professional Truck Driver.

On October 24, 2012, Volpe Dedicated, Inc. was a motor carrier in good standing with the Federal Motor Carrier Safety Administration, able to transport property in interstate commerce in all states including, Pennsylvania, New Jersey and New York since August 15, 2008.

1. Volpe Dedicated, Inc. hired driver Gerardo Rodriguez with many years of experience. He had a Class A Commercial Driver's License in which he had to pass a written and skills test.

There are no regulations requiring Volpe Dedicated, Inc. to train their drivers beyond the basics of the Federal Motor Carrier Safety Regulations. All training and safety meetings completed and documented by Volpe Dedicated, Inc. that I reviewed were above and beyond any regulatory requirements. The training documents that I reviewed are very similar to several other motor carriers I have seen over the years.

2. Driver Gerardo Rodriguez had a current medical certificate allowing him to operate a commercial motor vehicle in interstate commerce. Driver Gerardo Rodriguez had a recent medical examiner's certificate when being hired by Volpe Dedicated, Inc. Volpe required driver Gerardo Rodriguez to obtain a new medical certificate, though, at the time of hire. Volpe went above and beyond the requirements of the Federal Motor Carrier Safety Regulations to ensure they hired a medically qualified driver.
3. Driver Gerardo Rodriguez' deposition describing his procedures in performing a right hand turn and mirror usage, falls in line with the Commonwealth of Pennsylvania Commercial Driver's Manual (p2-16, p2-17, p2-25), the New Jersey Motor Vehicle Commission Commercial Driver License Manual (p2-19, p2-27, the New York State Commercial Driver's Manual (p2-15, p2-24), and the National Safety Council's Defensive Driving for the Professional Truck Driver (p30).
4. Volpe Dedicated, Inc. has an excellent record with the Federal Motor Carrier Safety Administration. Their Compliance, Safety and Accountability data is as good as a motor carrier can obtain. This means the FMCSA does not consider the carrier to be a risk and does not include it in its safety compliance audit program which is designed to target high risk motor carriers.

There is no evidence that would indicate that this motor carrier is anything other than a law abiding company complying with all the rules and regulations of the U. S. Department of Transportation.

5. There are no regulations pertaining to post-accident investigations by a motor carrier. The Federal Motor Carrier Regulations only require a motor carrier to maintain an accident register and copies of all accident reports required by State or other governmental entities or insurers. Volpe Dedicated, Inc.'s post-accident documentation is above and beyond any requirements of the Federal Motor Carrier Safety Regulations. Volpe Dedicated, Inc.'s procedures and documentation pertaining to the accident that occurred on October 24, 2012, is in line with the practices of several motor carriers I have observed over the years.

I do not know of any company that has a safety director trained to investigate accidents and/or question witnesses. That is a special skill with special training that is beyond a safety director's scope. Safety directors must rely on the police reports, photographs, driver statements, etc.

Volpe Dedicated, Inc. conducted a post-accident controlled substance test after the accident on October 24, 2012 when it was not required by the Federal Motor Carrier Safety Regulations. This was above and beyond regulatory requirements to ensure they had a safe driver on the roadway.

6. Tractors are extremely noisy. The noise is so great, that when performing roadside inspections, I utilized hand signals most of the time, because the drivers were not able to hear my verbal directions. When starting a turn from a complete stop at the red light as indicated by driver Gerardo Rodriguez stated in his deposition, he would have been revving the engine in order to start the vehicle moving forward. This would be very loud and those around the vehicle should have been aware of the tractor's presence.

The plaintiff, Felicita Melendez, as a pedestrian walking on the street, should have easily been able to hear the engine of the truck and should have been aware of its presence as it approached. The loudness of the vehicle was confirmed by Mr. Carl Jenkee's deposition. Mr. Jenkee stated that he was able to hear the loudness of the truck while sitting in his car with the windows cracked.

All opinions are based on my experience working in the motor carrier industry, years of applying the Federal Motor Carrier Regulations, Hazardous Materials Regulations, interpretations and regulatory guidance to motor carriers, as well as current reasonable practices within the industry. All my opinions are expressed to a reasonable degree of professional certainty and subject to change if any additional information becomes available.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Galbreath", written in a cursive style.

Kevin Galbreath

## **Attachment**

### **Evidence Reviewed**

- Summons
- Plaintiff's Responses and Objections/Rite Aid
- Plaintiff's Responses and Objections/Volpe
- Review of Exhibits
- Accident Report
- Deposition Christopher Prince
- Deposition Gerardo Rodriguez
- Review Driver Qualification File and Misc Docs
- Deposition Felicita Melendez
- Deposition Sean O'Dwyer
- Deposition Charesse Davis
- Deposition Brenda Cabrera
- Deposition Kenneth W. Cole
- Deposition Dante Francis
- Deposition Carl Jankee
- Miscellaneous Documents
- Commonwealth of Pennsylvania Commercial Driver's Manual
- New Jersey Motor Vehicle Commission Commercial Driver License Manual
- New York State Commercial Driver's Manual
- National Safety Council's Defensive Driving for the Professional Truck Driver
- [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)

# EXHIBIT “C”



## **FEE SCHEDULE**

Expert Witness	\$200.00 per hour plus expenses (\$2000 advance)
Deposition Fee	\$200.00 per hour plus expenses (6 hour minimum)

(Expenses include travel time, lodging, transportation, etc.)

## AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK     )  
                             ) ss.:  
COUNTY OF NEW YORK )

Nelida M. Lamboy-Perez, being duly sworn, deposes and says:

1. That she is an employee in the office of RAVEN & KOLBE, LLP, attorneys herein.
2. That deponent is not a party to the action or proceeding, is over eighteen (18) years of age, and resides in Glendale, New York.
3. That on August 8, 2013 she served the within copy of the **NOTICE OF EXPERT EXCHANGE AND EXHIBITS (MR. KEVIN GALBREATH)** upon:

NAPOLI BERN RIPKA SHKOLNIK, LLP  
350 5<sup>th</sup> Avenue, Suite 7413  
New York, New York 10118

DURKIN & DURKIN, LLP  
80 Broad Street, 5<sup>th</sup> Floor  
New York, New York 10004

by depositing a true copy of the same securely in a postpaid wrapper, in a Post Office Box regularly maintained by the United States Government directed to the above-mentioned parties at their respective address above, that this being the address within the State designated by them for the purpose upon the preceding papers in this action or the place where they then kept an office, between which place, there then was and now is a regular communication by mail.

NELIDA M. LAMBOY/PEREZ

Sworn to before me this  
8th day of August, 2013

Lorna Rodney  
Notary Public, State of New York  
No. 01R05056568  
Qualified in Kings County  
Commission Expires 3-4-14

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FELICITA MELENDEZ,

Plaintiff(s),

-against-

GERARDO RODRIGUEZ, VOLPE  
DEDICATED, INC. and RITE AID  
HEADQUARTERS CORP.,

Defendant(s).

**CIVIL ACTION NO. 12-CV-8846 (SMK)**

**AFFIRMATION OF SERVICE**

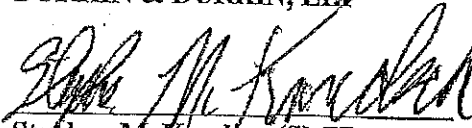
**I, STEPHEN M. KNUDSEN**, affirm under penalties of perjury that the **NOTICE OF EXPERT EXCHANGE OF KEVIN GALBREATH** with any and all exhibits was sent on September 20, 2013 via email and regular mail postage prepaid to the following;

TO: Napoli Bern Ripka Shkolnik, LLP  
Attorney for Plaintiff  
Attn: Joseph Napoli, Esq.  
350 5<sup>th</sup> Avenue, Suite 7413  
New York, New York 10118  
212-267-3700-Office  
212-587-0031-Facsimile

Raven & Kolbe, LLP  
Attorney for RITE AID  
Att.: Keith A. Raven, Esq.  
126 East 56<sup>th</sup> Street, Suite 202  
New York, New York 10022  
212-759-7466-Office  
212-759-0166-Facsimile

Dated: September 20, 2013  
New York, New York

**DURKIN & DURKIN, LLP**

By:   
**Stephen M. Knudsen (SMK)**  
Attorneys for **Defendants**,  
Gerardo Rodriguez and Volpe  
Dedicated, Inc.  
80 Broad Street - Fifth Floor  
New York, New York 10004  
212-349-8173